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POLICY BRIEFS

Action Guides for Legislators and Government Executives

Based on research and program development projects of the National Institute of Justice

Crime Victim Compensation

THE PROBLEM

The victim of crime often receives little attention from the government or the criminal justice system. If he or she is considered at all, it is usually as the witness to a crime having a civic duty to participate in criminal justice proceedings. With rare exception, the costs of victimization—both emotional and financial—are borne by the victim alone.

The price of this inattention includes:

- Decreased public support for a system which overlooks victims' needs while devoting substantial attention and resources to the offender;
 - Decreased victim incentives to cooperate with the criminal justice system, since the costs of reporting and testifying may outweigh the benefits of participation; and
- initial hardship for those injured victims of violent crime who are unable to support the al costs and income losses resulting from their victimization.

CONTENTS OF THIS BRIEF

Part I describes the experience of several states over the past 15 years in providing monetary compensation to victims injured as the result of a criminal incident. Established by legislative action, victim compensation programs provide a tangible demonstration of the state's concern for the innocent victim of violent crime.

Parts II-III provide information on the characteristics and benefits of statewide crime victim compensation programs.

Part IV contains a brief discussion of the actions which legislators and government executives may undertake to develop victim compensation programs.

Part V includes sample legislation and lists sources of additional information and assistance.

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NATIONAL INSTITUTE OF JUSTICE

Harry M. Bratt, *Acting Director*

Deborah M. Carrow, *Author*

Anthony Pasciuto, *Government Project Monitor*

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I. INTRODUCTION

The Need and Benefits of Crime Victim Compensation

In the decade of the 1970s, the violent crime rate has risen approximately 48 percent on a national basis. At the same time, medical costs and the cost of living have risen 96 and 84 percent, respectively. Thus, not only are the chances of victimization increasing; the costs borne by victims are rising as well.

For most victims, however, the costs of a criminal injury are still relatively small. Studies of crime victim compensation program costs estimate that most victims' medical expenses are under \$100, and that the average loss of income due to victimization is also less than \$100.^{1,2} This should not obscure the fact that in certain cases the costs of victimization may be ruinous. These same studies estimate that in one year alone, some 98,000 victimizations resulted in more than 10 days lost from work, while in approximately 30,500 cases, the out-of-pocket medical costs of injured victims were over \$1,000.

In theory there are many systems of financial relief available to injured parties. Yet all suffer from serious shortcomings which limit their usefulness to injured victims of crime:

- **Civil Remedies.** Victims have the right to institute a civil action against an offender to recoup damages. However, convicted offenders may lack the financial resources to pay, and civil court procedures are costly to the victim.
- **Third Party Litigation.** Under certain circumstances, victims of crime may obtain reparations from third parties who had the obligation to prevent a crime, and yet failed to do so. However, use of this approach is limited by:
 - the sovereign immunity claimed by many governments,
 - the expense of litigation, and
 - the relatively few instances in which such a suit would be appropriate.
- **Private Insurance.** While private insurance offers excellent financial protection, many victims—especially the young, indigent, or unemployed—may not have adequate medical insurance. One study of insurance coverage estimated that 11 to 18 million people were without health care coverage in 1978, representing 5 to 8 percent of the U.S. population.³
- **Public Assistance.** Welfare, Social Security, Medicaid, and Medicare are helpful to those who qualify but may be unavailable to many victims who do not meet appropriate standards of financial need, age, or disability.
- **Restitution.** In some instances offenders may be required to make direct payments to victims of crime. Drawbacks of this approach are the low number of offenders actually apprehended, the limited financial resources of many offenders, and the reluctance of criminal justice officials to impose a restitution order, either because of the added burden it may place on the offender or the increased workload for criminal justice agencies.

Recognizing the serious needs of many crime victims and the shortcomings of available systems of financial relief, many states have developed special crime victim compensation programs to respond to some of the financial consequences of victimization. These programs compensate innocent victims injured as a result of crime, and in cases of death, compensate the surviving dependents of the victim. Funds are provided for unreimbursed medical costs, loss of earnings, loss of support and funeral expenses.

Many feel that compensation programs offer the most equitable and accessible source of monetary assistance for crime victims. Unlike private insurance, there is no bias against the infirm,

elderly, unemployed, or low-income individual. Financial relief is not contingent upon the apprehension of the offender, nor does it rely on the offender's ability to pay. Finally, it does not require that the victim institute any private civil actions against the offender.

Although compensation programs may be justified on humanitarian grounds alone, they are also intended to provide more specific benefits. Figure 1 illustrates these objectives.

Figure 1
Objectives of Victim Compensation Programs

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- Demonstration of the state's concern for the victim of violent crime
 - Reduction of the financial impact of criminal injuries
 - Increased reporting of crime
 - Increased victim cooperation
 - More effective delivery of assistance to victims
 - Improved victim services throughout the state
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Current Status of State Programs

In 1965, California passed the first victim compensation statute in the United States. New York and Hawaii followed in 1967, while Maryland and Massachusetts enacted compensation statutes in 1968. (A description of the early history of these programs is available in *Public Compensation to Victims of Crime*.⁴) To date, 29 states have enacted some form of compensation legislation, while one state (Rhode Island) has passed a bill but delayed its implementation. For each of these states, Table 1 lists the year legislation was passed, program beneficiaries, and benefits.

Table 1
Status of State Victim Compensation Programs

State	Year Legislation Enacted	Beneficiaries	Maximum Benefits
Alaska	1972	victims; intervenors; dependents; persons who assume costs for the victim	\$25,000 per victim; \$40,000 for two or more survivors
California	1965	victims; dependents; persons who assume costs for the victim; intervenors	\$10,000 medical; \$10,000 lost earnings/support; \$3,000 rehabilitation; \$5,000 for intervenors or their dependents

Table 1 (continued)

State	Year Legislation Enacted	Beneficiaries	Maximum Benefits
Connecticut	1978	victims; intervenors; dependents	\$10,000
Delaware	1975	victims; dependents; persons who assume costs for the victim	\$10,000
Florida	1978	victims; intervenors; dependents	\$10,000
Georgia	1967	intervenors; dependents; persons who assume costs for the intervenor	\$5,000
Hawaii	1967	victims; intervenors; dependents; persons who assume costs for victims and intervenors	\$10,000
Illinois	1973	victims; intervenors; dependents; relatives who assume costs for the victim	\$10,000
Indiana	1978	victims; intervenors; dependents; law and fire officers injured in performance of duties	\$10,000
Kansas	1978	victims; intervenors; dependents; other third persons	\$10,000
Kentucky	1976	victims; intervenors; dependents	\$15,000
Maryland	1968	victims; intervenors; dependents	\$45,000; unlimited permanent disability and death benefits
Massachusetts	1968	victims; dependents	\$10,000
Michigan	1976	victims; intervenors; dependents	\$15,000

Table 1 (continued)

State	Year Legislation Enacted	Beneficiaries	Maximum Benefits
Minnesota	1974	victims; intervenors; dependents; victims' estates; persons who assume costs for the victim	\$25,000
Montana	1977	victims; intervenors; dependents	\$25,000
Nebraska	1978	victims, intervenors; dependents; persons responsible for maintenance of the victim	\$10,000
Nevada	1969	intervenors; dependents; persons responsible for the injured party	\$5,000
New Jersey	1971	victims; intervenors; dependents; persons responsible for maintenance of the victim	\$10,000
New York	1967	victims; dependents	unlimited medical; \$20,000 wage loss
North Dakota	1975	victims; intervenors; dependents	\$25,000
Ohio	1975	victims; intervenors; dependents; specific third persons	\$50,000
Oregon	1977	victims; intervenors; dependents	\$23,000
Pennsylvania	1976	victims; intervenors; dependents	\$25,000 loss of earnings/support; \$15,000 death benefits
Rhode Island ^a	1976	victims; dependents; persons responsible for maintenance of the victim	\$25,000

^aThe Rhode Island statute will not go into effect until passage of federal victim compensation legislation.

Table 1 (continued)

State	Year Legislation Enacted	Beneficiaries	Maximum Benefits
Tennessee	1976	victims; intervenors, dependents, persons responsible for maintenance of the victim	\$10,000
Texas	1979	victims; intervenors; dependents	\$50,000
Virginia	1976	victims; intervenors; dependents	\$10,000
Washington	1974	victims; intervenors; dependents	unlimited, amounts set by Workmen's Compensation
Wisconsin	1976	victims; intervenors, dependents; persons responsible for maintenance of the victim	\$10,000

Support for Victim Compensation

Since the mid-1960s, considerable national attention has been given to the concept of victim compensation:

- At its Annual Conference on October 6, 1966 the International Association of Chiefs of Police adopted a resolution calling for state and/or federal legislation to indemnify the victims of violent crime and their surviving dependents.
- In 1967, the President's Commission on Law Enforcement and the Administration of Justice released *The Challenge of Crime in a Free Society*. That report states: "the Commission believes that the general principal of victim compensation . . . is sound and that the experiments now being conducted with different types of compensation programs are valuable."
- In 1970, the National Conference of Commissioners on Uniform State Laws began the development of a model crime victim compensation bill. Three years of work culminated in the adoption of the Uniform Crime Victims Reparations Act. The House of Delegates of the American Bar Association approved this act in 1974. A copy of the Act is included in the Appendix.
- Over the past two decades, numerous bills requiring federal support for victim compensation have been introduced in the U.S. House and Senate. The latest measures introduced in the House (H.R. 4257) and the Senate (S. 190) call for federal subsidies of state victim compensation programs and set certain standards which programs must meet to qualify for supplemental funding. (A copy of the House bill is provided in the Appendix.)

- In 1980, the National Institute of Justice initiated a series of workshops on compensating the victims of crime under its criminal justice research utilization program. Through these workshops, held in 8 locations across the country, policymakers investigate the types of compensation available and the range of existing methods for providing compensation.⁵

Costs of Victim Compensation

Throughout the history of crime victim compensation in the United States, program cost has been the single most important issue for government executives, legislators, and program operators. Major concerns center around the possible financial impacts of the compensation program and the advisability of establishing new financial assistance programs in the face of growing public concern over rising government expenditures. Cost considerations have had a considerable impact on the development of victim compensation in the United States:

- Implementation of compensation legislation has been delayed or prevented in some areas. Rhode Island passed a compensation bill but stipulated that implementation was contingent upon passage of a federal compensation statute. Louisiana also enacted a compensation statute, but repealed the legislation when faced with the prospect of implementing the program without federal support.
- Almost half the states have not yet passed compensation statutes. For many, concern about cost is the major obstacle.
- Numerous attempts have been made to enact a federal crime victim compensation statute providing financial support to state programs. At least in part, opposition to federal involvement has revolved around the issue of cost.
- Cost considerations also affect the form and operations of existing compensation programs. Most victim compensation schemes contain provisions restricting victim eligibility and benefit payments. Minimum loss criteria, maximum payment levels, and limitations on types of losses compensated are all intended as cost-saving measures.

While costs continue to be a legitimate concern for policymakers, the experience of existing compensation programs shows that the actual expenditures of victim compensation programs are relatively low. The National Institute's *Crime Victim Compensation—Program Model*⁶ which provides detailed cost information on the yearly administrative expenses and benefits payments of 18 programs shows a range from approximately \$44,000 to almost \$5.5 million. As may be expected, smaller states and those with lower caseloads spent considerably less for victim compensation than larger states. The effect of state size on compensation costs was demonstrated in the Program Model, which found that the range among state benefit expenditures was far less dramatic when examined on a per capita basis. On the average, programs spent only \$.18 per resident per year on benefit payments; half the states spent \$.12 per capita or less.

Many are concerned that attempts to contain costs through eligibility and benefit restrictions may unduly limit victim access to the compensation program. For example, one estimate shows that only 8 percent of the injured victims of violent crimes would qualify for compensation under current eligibility restrictions.⁷

This concern, coupled with states' growing familiarity with the resource demands of compensation efforts, has prompted a number of states to ease some limitations. For example, Alaska and Minnesota raised their maximum benefits from \$10,000 to \$25,000, while New York State eliminated its minimum loss criteria. As more states gain experience in operating compensation programs and estimating their costs, opposition and restrictions based on issues of cost may gradually be eliminated.

II. KEY FEATURES OF VICTIM COMPENSATION PROGRAMS

The various options for developing crime victim compensation programs are examined in depth in *Crime Victim Compensation—Program Model*,⁶ published in 1980 by the National Institute of Justice. Key features of compensation programs are noted below.

Coverage. Almost every program provides funds for unreimbursed medical costs, lost wages, loss of support, and funeral expenses. Some states, such as California, also cover the cost of rehabilitation services. A number of states reimburse the expense of replacing the services which the victim would have performed free of charge for his or her family. Although less common, some states also cover treatment costs for psychological injuries resulting from crimes. Property loss is compensated only under very limited circumstances.

Eligibility. Persons eligible for compensation generally include victims of crime, intervenors (persons who have attempted to prevent a crime or aid a law enforcement officer), and the dependents of deceased victims and intervenors. In addition, some statutes allow compensation to persons who have incurred expense for the maintenance or care of an injured victim. Common restrictions on eligibility include residency requirements, minimum loss criteria and financial need requirements. Persons who contribute to their own injury may be denied compensation; those who are related to the offender or who have failed to report the crime are almost always excluded. Several of these restrictions have been challenged by practitioners and researchers alike.⁸

Application Process. Victim compensation programs require claimants to submit a written application which provides information on (1) the criminal incident giving rise to the claim and (2) the financial losses resulting from the crime. The forms vary greatly in terms of length, complexity, and intrusiveness. Information on the application is verified, and if necessary, additional information may be sought through an investigation; the extent of verification and investigation carried out differs considerably among programs. Hearings are a common feature in many states. Most states conduct these proceedings on an as-needed basis; however, some programs conduct hearings on every claim, while others conduct no hearings at all.

Claims Decisions. The procedures and personnel used for claims decisions are determined by the placement of the program and the specific claims processing options prescribed in the victim compensation statute. In most cases, the initial decision is open to review or appeal. In some programs, appeals may be held at two levels: internal/administrative and judicial. However, it is not uncommon for programs to offer only one of these two appeal procedures.

Public Awareness. Lack of public awareness of victim compensation services and requirements is a major problem. Some programs make no special effort to improve this situation, fearing that widespread public awareness will result in substantial increases in claims volumes and subsequent strains on the program budget. Other programs assume responsibility for public awareness by instituting one or more of the following procedures:

- distribution of printed materials such as brochures and posters;
- use of public service announcements on radio and television;
- news coverage of the program's activities and services; and
- paid advertisements.

Outreach. Some programs go beyond simple public awareness efforts. Rather than relying on the victim to take the initiative, these programs contact victims directly. Among the available outreach approaches are:

- requiring the police to inform every violent crime victim of the compensation program. Such an approach was implemented in New York in 1977, and preliminary results indicate a noticeable increase in victims' awareness following implementation.⁹
- enlisting the assistance of other agencies which are likely to come into contact with crime victims: hospital emergency rooms, social service agencies, and victim/witness assistance programs. These groups can easily notify victims of the compensation program benefits and procedures.
- providing individualized notification. Under this system, police incident reports are screened and all potentially eligible victims are sent information concerning victim compensation. Notification may be carried out by compensation program staff, police agencies, or victim/witness assistance groups.

Benefits. Victim compensation programs cover a wide variety of expenditures relating to criminal injuries. Most programs provide for:

- all medical costs not reimbursed through other sources;
- unreimbursed loss of earnings;
- payments for loss of support for dependents of deceased victims;
- funeral costs;
- medical costs of the deceased victim; and
- short-term emergency awards for claimants who may experience severe financial difficulty without immediate assistance.

In addition to these basic benefits, some programs offer:

- reimbursement for rehabilitation training;
- reimbursement for the costs of replacing the services which the victim would normally provide for the family free of charge;
- replacement of certain medical devices such as hearing aids, eyeglasses, or artificial limbs;
- attorneys' fees incurred by victims engaging in the compensation process;
- costs of psychiatric treatment necessitated by the crime;
- compensation for disability or disfigurement; and
- in some rare cases, awards for pain and suffering.

Award Limitations. Almost every program places some maximum limit on the benefits offered, usually ranging from \$10,000 to \$50,000. In general, the limits are viewed as cost-saving measures. However, a number of programs, such as those of New York, Alaska, and Minnesota, have raised their maximum limits as they have gained greater experience with the demands of victim compensation.^{6,8} It is also common for programs to limit weekly payments to some specific maximum, usually between \$100 and \$250. Maximums may also be set on particular categories of benefits, such as attorneys' fees, funeral costs, or wage loss. In addition to maximum limits, many programs require certain minimum losses or minimum deductibles. Commonly, these are expressed either as a minimum dollar loss, ranging from \$25 to \$250, or some minimum time lost from work, usually one or two weeks. Again, these criteria are intended to reduce program costs.

Payment Methods. Depending on the amount and type of award, programs may offer either lump sum or protracted payments. The lump sum award is generally used in cases where the costs are easily determined and the award is moderate in size. Protracted payments, on the other hand, are used for large awards, for awards in which costs are not fixed, and for long-term disability or loss of earnings/support.

III. EXPANDING VICTIM SERVICES

Victim compensation programs are one component of the growing movement to provide services to the victims of crime. Programs' participation in this broader movement can take several forms:

- establishment of working relations with criminal justice, health, and social service agencies;
- interdependent relations with victim service agencies for victim notification and referrals;
- development of direct victim service efforts by the compensation program;
- compensation program involvement in statewide coordination of victim service efforts.

Developing Interagency Liaison

Because victim compensation programs must rely on several different agencies and organizations throughout the state for information and assistance, it is essential that they develop standard working relationships with police departments, the courts, the medical community, the insurance industry, public assistance programs, and victim service groups. The delineation of complementary responsibilities is particularly important in order to minimize duplication of services and enhance the effectiveness of all groups.

A wide variety of techniques may be used to establish interagency relations. Key approaches include:

- prescribing interagency relations through the compensation statute, the program's rules and regulations, or the procedures and forms used by the program.
- capitalizing on the prior relationships and personal contacts of compensation program staff. For example, staff members with backgrounds in law enforcement may be able to develop good relations with police agencies.
- ensuring that other programs are aware of the victim compensation programs by providing special training sessions or informational materials to staff of other agencies. In Minnesota, for example, the compensation program director regularly presents victim compensation training sessions at the Police Academy.¹⁰
- developing ongoing relations with professional organizations in the state, such as the bar association, hospital administrative and planning boards, medical associations, and local and statewide police organizations.

Problems which victim compensation programs may encounter in establishing these relationships include financial constraints, staffing limitations, and the large number of relevant agencies and organizations in the state.

Interdependent Relationships with Victim Service Agencies

Many local jurisdictions now offer specialized counseling and crisis intervention,¹¹ assistance in obtaining community services, and special witness notification and support services for victims participating in the criminal justice process.¹² In states with victim compensation programs, victim service groups have frequently taken the initiative to inform victims of the availability of compensation and to assist in preparing application materials. In turn, some victim compensation programs have developed cooperative relationships with local victim service groups, using them as a referral resource for needy victims.

Providing Victim Services

Some compensation programs arrange for victim assistance as well as compensation. In Delaware, for example, the Violent Crimes Compensation Board was one of the leading forces behind the development of their statewide victim/witness assistance program which remains functionally and administratively independent of the Compensation Board. In New York State, the Crime Victims Compensation Board instituted a special form of assistance for elderly crime victims in its New York City office. The Elderly Unit, consisting of two investigators and one support staff member, handles all claims from individuals aged 60 or over. Each elderly applicant is contacted personally, and if it appears that the applicant is having difficulty in completing the application materials, a member of the Elderly Unit may make a personal visit to the claimant to assist him or her with the application.

Statewide Coordination of Victim Assistance

A unique approach to the interaction of victim services and victim compensation has recently been undertaken in New York State. The legislature authorized the Crime Victims Compensation Board to implement a statewide strategy for serving the needs of crime victims, made it responsible for coordination of state-funded victim assistance services, and designated the Board as the primary liaison between such programs and state government. The New York Board is presently the only victim compensation program with such a mandate. A copy of the legislation authorizing this move is included in the Appendix.

To support this coordinative function, the New York State Board was awarded a grant from the Law Enforcement Assistance Administration through its National Victim/Witness Strategy Program. Other states which have received LEAA grants to develop a statewide network of victim services are California, Connecticut, Florida, Illinois, Kentucky, Massachusetts, and New Jersey.⁵ In those states, however, the victim compensation program was not designated as the implementing agency.

IV. AGENDA FOR ACTION

Establishment of a victim compensation program requires a dual initiative:

- Determination of an appropriate administrative body and revenue source; and
- Enactment of authorizing legislation which sets forth the scope, policies, and procedures of the compensation effort.

Decisions that are made by legislators and government executives in the initial planning of a victim compensation program are likely to require later refinement and revision as experience is gained with program operations.

Determining the Program Placement

The administrative placement of the compensation program is a key concern, since it may have a strong influence on the procedure, operations and structure of the program. Three major options are available:

- **New Administrative Agency.** Creation of a new administrative agency is the most common choice among states having victim compensation programs. Generally, a commission appointed by the Governor is given responsibility for claims decisions and general program policy. Depending on the program size, the agency may have a staff of administrative, investigative, and/or support personnel. Advantages of this placement include: exclusive focus on victims and compensation issues; administrative flexibility; accountability; and the potential capacity to process large claims volumes effectively. Disadvantages include higher implementation costs, high operating costs in states with low claims volumes; and longer implementation periods than other program placements.
- **Existing Administrative Agency.** Another common approach is to expand the jurisdiction of an existing administrative agency to include the compensation effort. Most frequently, the State Industrial Insurance Agency (Worker's Compensation) or the agency which hears claims against the state (e.g., a State Board of Claims) is designated as the parent agency. Benefits of this approach include ease of implementation, potential cost savings realized through sharing of facilities and services, decentralization through use of any regional offices of the parent agency, and the ability to draw on the contacts and relationships established by the host agency. Drawbacks of this arrangement are resistance of parent agency staff, potential difficulty in handling large claims volumes, and potential conflicts of the compensation procedures with traditional duties of the parent agency.
- **Court System.** Placement in the court system has been chosen by only four states. In court-operated compensation programs, claims decisions are made by judges or commissioners, claims investigations are carried out by the State Attorney General's Office or local district attorneys, and claims processing is conducted by the court clerk. Advantages of court placement include: ready availability of highly specialized and trained personnel; the possibility of lower implementation costs through sharing of resources and personnel; and more formalized procedures which may safeguard claimants' rights. Disadvantages include lack of central administrative authority and responsibility for the program; inadequate staff to handle additional demands of the program; conflicts due to court case backlogs; and potentially high costs, as salaries of judicial personnel and the Attorney General's staff are often higher than those of administrative personnel.

There is no single administrative placement which is appropriate for all states, and the program placement decision will depend on the administrative structure of the particular state government, the willingness of various agencies to assume responsibility for crime victim compensation, and legislators' philosophies concerning the nature of the compensation decision and the way

that the decision should be made. In addition, the demographic characteristics of the state may influence the placement decision: for example, states with large victim compensation claims volumes may find the new agency placement to be more feasible than placement in the courts, where existing caseloads may preclude any addition of claims responsibilities. Additional information on the advantages, drawbacks, and operational requirements of various program placements is provided in the National Institute publication *Crime Victim Compensation—Program Model*.⁶

Obtaining Funds

A major concern in establishing or modifying compensation programs is the source of program funding. Several primary and supplemental sources should be considered.

- **General state revenues.** Most compensation programs rely on general state revenues for the bulk of their operating costs and benefit payments. While the sufficiency of these funds depends on the state appropriations process, general revenues usually offer the most consistent and stable source of funding for compensation programs.
- **Surcharge or fine.** In many states, offenders convicted of certain criminal charges may be assessed an additional monetary penalty, ranging from \$5 to \$21. Once collected, these monies are placed in a special victim indemnity fund for use by the program. In most states fines provide only supplemental funding; however, for some compensation programs they constitute the primary revenue source.
- **“Son of Sam” provisions.** Instituted in New York State in 1977, the “Son of Sam” provision requires that any proceeds offenders may gain by selling the rights to their story to the media must be placed in an escrow account and used for reparation payments to the victims of the incident in question. However, the constitutionality of this provision is still under consideration.
- **Filing fees.** Court-based victim compensation programs often impose a small (\$5-\$10) filing fee. Although not a major source of program income, these fees may help to offset some of the costs of program administration. However, strong criticism has been voiced about the propriety of this procedure.
- **Alternate funding approaches.** Recommendations have also been made for such alternate funding approaches as use of the proceeds from police department sales of unclaimed property or use of funds earned by offenders employed in prison industries programs.¹³

Instituting or Revising the Compensation Statute

There are three general sources of guidance for states which have not yet enacted victim compensation legislation:

- **Uniform Crime Victims Reparations Act.** Drafted in 1973 by the National Conference of Commissioners on Uniform State Laws, the Uniform Act provides a comprehensive model for states wishing to establish compensation programs under a new agency placement. Many states have adopted the Uniform Act in whole or in part. A copy of the Act is provided in the Appendix.
- **Existing legislation.** Existing state victim compensation statutes provide other models for new legislation. States’ experience with various placement, funding, administrative, and procedural provisions can be a valuable source of guidance for drafters of new legislation.

- **Federal legislation.** The latest federal crime victim compensation bills (H.R. 4257 and S. 190) prescribe basic standards which state victim compensation programs must meet to qualify for federal support. Policymakers may therefore wish to consider the probable federal requirements when drafting new state legislation. Should federal legislation be passed, the requirements of the statute are likely to have a major influence on the operations of existing programs and the development of new programs. H.R. 4257 is reproduced in the Appendix.

After the state has gained some experience in administering the victim compensation program, certain revisions or modifications of the statute may be necessary. Two approaches may be taken:

- **Legislative amendments.** Common areas for legislative amendment include eligibility criteria, statutory limits on certain benefits, and structural concerns such as the size of the compensation board or the administrative placement of the program. The New York State legislation authorizing the Crime Victims Compensation Board to assume a statewide advocacy and coordination role is another example of a possible area for legislative action.
- **Legal challenges.** Legal challenges to the compensation statute may offer another avenue for reform. For example, at one time the Massachusetts state victim compensation program required that sums recovered from such sources as insurance, workmen's compensation, or medicare be deducted from the upper award limit. This provision was successfully challenged and modified through the State Supreme Court decision in *Gurley v. Commonwealth*. However, legal challenges are as yet relatively uncommon, and there is little case law to provide guidance in formulating challenges to specific provisions. Areas which may be open to legal challenge include residency requirements, definitions of dependency, and upper limits on recovery.

V. SOURCES FOR FURTHER INFORMATION AND ASSISTANCE

The appendices contain the text of the Uniform Crime Victims Reparations Act, the New York State legislation authorizing the Compensation Board to assume an advocacy role, and the most recent U.S. House bill on crime victim compensation.

The following written reports, referenced in the text of this Brief, can be consulted for more information on victim compensation programs and legislation:

1. Garafalo, James and Sutton, L. Paul. **Compensating Victims of Violent Crime: Potential Costs and Coverage of a National Program.** Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, 1977.
2. Congressional Budget Office, Congress of the United States. **Profile of Health-Care Coverage: The Haves and Have Nots.** Washington, D.C.: Government Printing Office, 1979.
3. Garafalo, James and McDermott, M. Joan. *National Victim Compensation—Its Cost and Coverage.* *Law and Policy Quarterly* 1 (October 1979): 439-464.
4. Edelhertz, Herbert and Geis, Gilbert. **Public Compensation to Victims of Crime.** New York: Praeger Publishers, 1974.
5. Austern, David T.; Galaway, Burt; Godegast, Richard A.; Gross, Richard J.; Hofrichter, Richard; Hudson, Joe; Hutchison, Thomas W.; and Young-Rifai, Marlene. **Compensating Victims of Crime—Participant's Handbook.** Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1979.
6. Carrow, Deborah M. **Crime Victim Compensation—Program Model.** Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1980.
7. Harland, Alan T. *Compensating the Victims of Crime.* *Criminal Law Bulletin* 14 (May-June 1978): 203-224.
8. Lamborn, LeRoy. *Reparations for Victims of Crime: Developments and Directions.* *Victimology* 4 (1979): 214-228.
9. New York Legislative Commission on Expenditure Review. **Crime Victim Compensation Program, Program Audit, 1979.** April 1979.
10. State of Minnesota, Department of Administration. *An Analysis of the Public Information Effort of the Minnesota Crime Victims Reparations Board.* St. Paul, Minnesota, July 1978.
11. Carrow, Deborah, M. **Rape: Guidelines for a Community Response.** Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, 1980.
12. Rosenblum, Robert H. and Blew, Carol Holliday, **Victim/Witness Assistance—Monograph.** Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, 1979.
13. New York Crime Victims Compensation Board. **1977-1978 Annual Report.** Albany, 1978.

For information on the National Institute's Criminal Justice Research Utilization Program Workshop on crime victim compensation contact:

Dr. Sheldon S. Steinberg
Project Director
Criminal Justice Research Utilization Program
University Research Corporation
5000 Wisconsin Avenue
Washington, D.C.

The following individuals are experienced in the planning and operation of crime victim compensation programs and may be contacted for information and advice:

Martin M. Moylan
Chairman, National Association of Crime Victim Compensation Programs
Executive Director, Maryland Criminal Injuries Compensation Board
1123 N. Eutaw Street
Baltimore, Maryland 21201

Richard Godegast
Assistant Executive Secretary
State Board of Control
926 J. Street, Suite 300
Sacramento, California 95814

Brian Huseby
Adjudicator
Crime Victim Compensation Division
Department of Labor and Industry
General Administration Building
Olympia, Washington 98504

APPENDIX

- New York State House Bill 2366-A, authorizing the New York Crime Victims Compensation Board to assume a victim advocacy role.
- Uniform Crime Victims Reparations Act
- Federal crime victim compensation bill: H.R. 4257

STATE OF NEW YORK

Cal. No. 176

2366-A

1979-1980 Regular Sessions

IN ASSEMBLY

January 31, 1979

Introduced by M. of A. LENTOL, KREMER, M.H. MILLER, FINK -- Multi-Sponsored by M. of A. BIANCHI, BUTLER, CONNELLY, CONNERS, CONNOR, FINNERAN, GOLDSSTEIN, GOTTFRIED, GRECO, HINCHEY, HIRSCH, HOCHBRUECKNER, LIPSCHUTZ, MARCHISELLI, McCABE, NICOLosi, ORAZIO, PILLITTERE, ROBACH, SANDERS, SCHIMMINGER, SEMINERIO, SIEGEL, VIRGILIO, D.B. WALSH, WILSON, ZIMMER read once and referred to the Committee on Governmental Operations passed by Assembly and delivered to the Senate, recalled from Senate, vote reconsidered, bill amended, ordered reprinted and restored to third reading

AN ACT to amend the executive law, in relation to the powers and duties of the crime victims compensation board and to repeal subdivision nine of section six hundred twenty-three of such law, relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Legislative findings and intent. The legislature hereby finds and
2 declares that:
3 1. The continued prevalence of violent crime has placed a great strain on the
4 criminal justice system of the state.
5 2. The emphasis by most criminal justice agencies on the apprehension,
6 prosecution, rights, care, punishment and rehabilitation of the criminal offender
7 has sometimes led to the neglect of the rights and interests of innocent victims
8 of crime.
9 3. Recent studies have indicated that nearly one-half of violent crimes in large
10 cities go unreported by crime victims.
11 4. The ability of the criminal justice system to reduce crime depends in large
12 part on the cooperation and participation of citizens, particularly crime victims.
13 It is the intent of the legislature, by this legislation, to strengthen and expand
14 the role of the crime victims compensation board so that the board may actively
15 speak for and advocate the rights and interests of crime victims throughout the
16 state, thereby encouraging a restoration of faith by citizens in the criminal
17 justice system and an eventual reduction in the overall rate of violent crime.
18 § 2. Subdivision three of section six hundred twenty-three of the executive
19 law, as added by chapter eight hundred ninety-four of the laws of nineteen
20 hundred sixty-six, is amended to read as follows:

EXPLANATION --- Matter in *italics* is new; matter in brackets [] is old law to be omitted.

- 1 3. To adopt, promulgate, amend and rescind suitable rules and regulations to
2 carry out the provisions and purposes of this article, including rules for the
3 approval of attorneys' fees for representation before the board or before the
4 appellate division upon judicial review as provided for in section six hundred
5 twenty-nine of this article, and rules for the authorization of qualified persons to
6 assist claimants in the preparation of claims for presentation to the board or board
7 members.
8 § 3. Subdivision nine of section six hundred twenty-three of such law is
9 repealed and subdivision ten is renumbered subdivision twenty-one and twelve
10 new subdivisions nine through twenty are added to read as follows:
11 9. To establish and maintain a special investigative unit to expedite processing of
12 claims by senior citizens and special emergency situations, and to promote the
13 establishment of a volunteer program of home visitation to elderly and invalid victims
14 of violent crime.
15 10. To advise and assist the governor in developing policies designed to recognize
16 the legitimate rights, needs and interests of crime victims.
17 11. To coordinate state programs and activities relating to crime victims.
18 12. To cooperate with and assist political subdivisions of the state in the
19 development of local programs for crime victims.
20 13. To study the operation of laws and procedures affecting crime victims and
21 recommend to the governor proposals to improve the administration and effectiveness
22 of such laws.
23 14. To establish an advisory council to assist in formulation of policies on the
24 problems of crime victims.
25 15. To advocate the rights and interests of crime victims of the state before federal,
26 state and local administrative, regulatory, legislative, judicial and criminal justice
27 agencies.
28 16. To promote and conduct studies, research, analyses and investigations of
29 matters affecting the interests of crime victims.
30 17. To sponsor conferences relating to the problems of crime victims.
31 18. To serve as a clearinghouse for information relating to crime victims problems
32 and programs.
33 19. To accept, with the approval of the governor, as agent of the state, any grant
34 including federal grants, or any gift for the purposes of this article. Any monies so
35 received may be expended by the board to effectuate any purpose of this article,
36 subject to the applicable provisions of the state finance law.
37 20. To render each year to the governor and to the legislature a written report on
38 the board's activities and the manner in which the rights, needs and interests of crime
39 victims are being addressed by the state's criminal justice system.
40 § 4. This act shall take effect immediately and shall remain in full force and effect for one
41 year from the date this act shall have taken effect.

UNIFORM CRIME VICTIMS REPARATIONS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-SECOND YEAR
AT HYANNIS, MASSACHUSETTS
JULY 26-AUGUST 2, 1973

WITH PREFATORY NOTE AND COMMENTS

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING IN
HOUSTON, TEXAS, FEBRUARY 5, 1974

The committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Crime Victims Reparations Act was as follows:

RICHARD COSWAY, University of Washington School of Law, Seattle, WA 98195, *Chairman*

FRANK E. DULLY, 60 Washington Street, Hartford, CT 06106

ALFRED C. HAGAN, P.O. Box 877, Boise, ID 83701

WILLIS E. SULLIVAN, P.O. Box 1466, Boise, ID 83701

RICHARD O. WHITE, Legislative Building, Olympia, WA 98501

PARHAM H. WILLIAMS, JR., University of Mississippi School of Law, University, MS 38677

DWIGHT A. HAMILTON, 900 Equitable Building, Denver, CO 80202, *Chairman, Division C, Ex-Officio*

EUGENE A. BURDICK, P.O. Box 757, Williston, ND 58801, *President, Ex-Officio*

Copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from

NATIONAL CONFERENCE OF COMMISSIONERS ON
UNIFORM STATE LAWS
645 North Michigan Avenue, Suite 510
Chicago, Illinois 60611

PREFATORY NOTE

This Act establishes a state-financed program of reparations to persons who suffer personal injury and dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or to apprehend criminals. Reparations are measured by economic loss such as medical expenses, loss of earnings,

and costs incurred in obtaining services as a substitute for those the victim would have provided. Throughout, the emphasis is on the victim rather than the perpetrator of the crime.

The civil and criminal liability of the offender is not covered by this Act, save for provisions directing the offender to reimburse the State. The actual financial return to the State through this mechanism is not anticipated to be large, and a realistic appraisal is that the costs of the program will be borne by the State and its citizens. A variety of limitations and exclusions stated in the Act are designed to limit those costs. The suggested maximum allowance of \$50,000 per victim, the exclusion of motor vehicle accidents (with some exceptions), and elimination of pain and suffering as an element of awards are illustrations.

Probably the most perplexing policy choice to be made by any state instituting a program of this sort relates to the relevance, if any, of the financial condition of the victim. Some would further reduce costs by denying reparations to victims able to bear the economic loss caused by crime. Others would conclude that the victim's losses should be borne by the State irrespective of his financial resources. This Act is drafted to accommodate either choice, but the clear preference is to eliminate any "financial needs" or "financial stress" test as a condition precedent to receipt of benefits. For those states taking the other view, the Act contains a provision including this condition but defining it in terms of financial hardship or stress rather than "need." The objective of that definition is to ensure that the program is not an unnecessary substitute for welfare but is a program to protect against substantial changes in life style caused by losses through crime.

A kindred issue is that of allocation of criminally caused loss through personal injury among competing sources of payment such as insurance, workmen's compensation and Social Security. This Act reflects the policy choice that these programs are primary. Implementation of that policy occurs in two ways. First, insurers are not entitled to claim reimbursement from the State for their expenditures. Second, victims who have been paid, or who are entitled to be paid, by insurers will have their claims against the State fund reduced by the amount of available insurance. In somewhat overly simplistic terms, the policy of the Act is to preclude double recovery for any criminal incident.

Administration of the Act is entrusted to a three-man Board whose members will serve full or part time, depending upon the expectable workload in any state. The Act includes procedural details which will be seen to parallel provisions of the Uniform Administrative Procedures Act. Any State legislature in a state having such an administrative procedures act will be well advised to eliminate the duplicate provisions herein.

UNIFORM CRIME VICTIMS REPARATIONS ACT

SECTION 1. [Definitions.]

(a) As used in this Act, the words and phrases in this Section have the meanings indicated.

(b) "Board" means the Crime Victims Reparations Board created under Section 3.

(c) "Claimant" means any of the following claiming reparations under this Act: a victim, a dependent of a deceased victim, a third person other than a collateral source, or an authorized person acting on behalf of any of them.

(d) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this Act which the victim or claimant has received, or which is readily available to him, from:

(1) the offender;

(2) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this Act;

(3) Social Security, Medicare, and Medicaid;

21 (4) state required temporary non-occupational disabil-
22 ity insurance;
23 (5) workmen's compensation;
24 (6) wage continuation programs of any employer;
25 (7) proceeds of a contract of insurance payable to the
26 victim for loss which he sustained because of the criminally
27 injurious conduct; or
28 (8) a contract providing prepaid hospital and other
29 health care services, or benefits for disability.
30 (e) "Criminally injurious conduct" means conduct that
31 (1) occurs or is attempted in this State, (2) poses a substan-
32 tial threat of personal injury or death, and (3) is punishable
33 by fine, imprisonment, or death, or would be so punishable
34 but for the fact that the person engaging in the conduct lacked
35 capacity to commit the crime under the laws of this State.
36 Criminally injurious conduct does not include conduct arising
37 out of the ownership, maintenance, or use of a motor vehicle
38 except when intended to cause personal injury or death.
39 (f) "Dependent" means a natural person wholly or par-
40 tially dependent upon the victim for care or support and in-
41 cludes a child of the victim born after his death.
42 (g) "Economic loss" means economic detriment consisting
43 only of allowable expense, work loss, replacement services
44 loss, and, if injury causes death, dependent's economic loss
45 and dependent's replacement services loss. Noneconomic detri-
46 ment is not loss. However, economic detriment is loss al-
47 though caused by pain and suffering or physical impairment.
48 (1) "Allowable expense" means reasonable charges in-
49 curred for reasonably needed products, services, and accom-
50 modations, including those for medical care, rehabilitation,
51 rehabilitative occupational training, and other remedial
52 treatment and care. The term includes a total charge not in
53 excess of \$500 for expenses in any way related to funeral,
54 cremation, and burial. It does not include that portion of a
55 charge for a room in a hospital, clinic, convalescent or nurs-
56 ing home, or any other institution engaged in providing
57 nursing care and related services, in excess of a reasonable
58 and customary charge for semi-private accommodations,
59 unless other accommodations are medically required.
60 (2) "Work loss" means loss of income from work the in-
61 jured person would have performed if he had not been in-
62 jured, and expenses reasonably incurred by him in obtaining
63 services in lieu of those he would have performed for in-
64 come, reduced by any income from substitute work actually
65 performed by him or by income he would have earned in
66 available appropriate substitute work he was capable of
67 performing but unreasonably failed to undertake.
68 (3) "Replacement services loss" means expenses reason-
69 ably incurred in obtaining ordinary and necessary services
70 in lieu of those the injured person would have performed,
71 not for income but for the benefit of himself or his family,
72 if he had not been injured.
73 (4) "Dependent's economic loss" means loss after dece-
74 dent's death of contributions of things of economic value to
75 his dependents, not including services they would have re-
76 ceived from the decedent if he had not suffered the fatal
77 injury, less expenses of the dependents avoided by reason
78 of decedent's death.
79 (5) "Dependent's replacement services loss" means loss
80 reasonably incurred by dependents after decedent's death
81 in obtaining ordinary and necessary services in lieu of those
82 the decedent would have performed for their benefit if he
83 had not suffered the fatal injury, less expenses of the de-
84 pendents avoided by reason of decedent's death and not
85 subtracted in calculating dependent's economic loss.
86 (h) "Non-economic detriment" means pain, suffering, in-
87 convenience, physical impairment, and other non-pecuniary
88 damage.
89 (i) "Victim" means a person who suffers personal injury or
90 death as a result of (1) criminally injurious conduct, (2) the
91 good faith effort of any person to prevent criminally injurious
92 conduct, or (3) the good faith effort of any person to appre-
93 hend a person suspected of engaging in criminally injurious
94 conduct.

COMMENT

The words "criminally injurious conduct" are used throughout this Act rather than the simple word "crime" because if the word "crime" were used, it would need to be given an artificial meaning. The reason is that not all crimes will result in reparations under this Act, and those crimes which are reparable fall under the definition here given for "criminally injurious conduct."

The definitions of "economic loss" and its components are derived, with essential modifications, from the Uniform Motor Vehicle Accident Reparations Act.

1 SECTION 2. [Award of Reparations.] The Board shall
2 award reparations for economic loss arising from criminally
3 injurious conduct if satisfied by a preponderance of the evi-
4 dence that the requirements for reparations have been met.

1 SECTION 3. [Crime Victims Reparations Board.]

2 (a) A Crime Victims Reparations Board is created [in the
3 executive branch], consisting of three members appointed by
4 the Governor [with the advice and consent of the Senate]. At
5 least one member shall be a person admitted to the bar of this
6 State.

7 (b) The term of office of each member shall be [6] years
8 and until his successor is appointed and qualified, except that
9 of the members first appointed one each shall be appointed
10 to serve for terms of [2], [4], and [6] years. A person ap-
11 pointed to fill a vacancy shall be appointed for the remainder
12 of the unexpired term.

13 (c) The Governor shall designate a member who is admit-
14 ted to the bar of this State to serve as chairman at the pleas-
15 ure of the Governor.

16 (d) Members shall [serve full time, receive an annual salary
17 prescribed by the governor within the available appropriation
18 not exceeding [] dollars,] [serve part time, and receive
19 [] dollars per diem,] and be reimbursed for actual ex-
20 penditures incurred in performance of their duties in the same
21 manner as State officials generally.

1 SECTION 4. [Powers and Duties of the Board.]

2 (a) In addition to the powers and duties specified else-
3 where in this Act, the Board has the powers and duties speci-
4 fied in this section.

5 (b) The duty to establish and maintain a principal office
6 and other necessary offices within this state, appoint em-
7 ployees and agents as necessary, and prescribe their duties
8 and compensation.

9 (c) The duty to adopt by rule a description of the organi-
10 zation of the board stating the general method and course of
11 operation of the Board.

12 (d) The duty to adopt rules to implement this Act, includ-
13 ing rules for the allowance of attorney's fees for representation
14 of claimants; and to adopt rules providing for discovery
15 proceedings, including medical examination consistent with
16 Section 9 and 10. Rules shall be statements of general appli-
17 cability which implement, interpret, or prescribe policy, or
18 describe the procedure or practice requirements of the Board.

19 (e) The duty to prescribe forms for applications for repa-
20 rations.

21 (f) The duty to hear and determine all matters relating to
22 claims for reparations, and the power to reinvestigate or re-
23 open claims without regard to statutes of limitations or peri-
24 ods of prescription.

25 (g) The power to request from prosecuting attorneys and
26 law enforcement officers investigations and data to enable the
27 Board to determine whether, and the extent to which, a claim-
28 ant qualifies for reparations. A statute providing confiden-
29 tiality for a claimant's or victim's juvenile court records does
30 not apply to proceedings under this Act.

31 (h) The duty, if it would contribute to the function of the
32 Board, to subpoena witnesses and other prospective evidence,
33 administer oaths or affirmations, conduct hearings, and re-
34 ceive relevant, nonprivileged evidence.

35 (i) The power to take notice of judicially cognizable facts
36 and general, technical, and scientific facts within their spe-
37 cialized knowledge.

38 (j) The duty to make available for public inspection all
39 Board decisions and opinions, rules, written statements of pol-

40 icy, and interpretations formulated, adopted, or used by the
41 Board in discharging its functions.

42 (k) The duty to publicize widely the availability of reparations
43 and information regarding the filing of claims therefor.

COMMENT

This section and section 8 contain details which are redundant in a state having an adequate Administrative Procedures Act. Incorporation of these details in this Act ought not to be taken as encouragement to repetitious legislation. Each state must tailor the Act to its situation, by eliminating needless procedural details.

This Act does not include elaborate requirements for public notice and hearings relating to the rule making function of the Board, because the kinds of beneficiaries to be expected under this Act do not have an identifiable interest in procedural rules.

1 SECTION 5. [Application for Reparations; Awards; Limitations on Awards.]

3 (a) An applicant for an award of reparations shall apply
4 in writing in a form that conforms substantially to that prescribed by the Board.

6 (b) Reparations may not be awarded unless the claim is
7 filed with the Board within one year after the injury or death
8 upon which the claim is based.

9 (c) Reparations may not be awarded to a claimant who is
10 the offender or an accomplice of the offender, nor to any
11 claimant if the award would unjustly benefit the offender or
12 accomplice. [Unless the Board determines that the interests
13 of justice otherwise require in a particular case, reparations
14 may not be awarded to the spouse of, or a person living in the
15 same household with, the offender or his accomplice or to
16 the parent, child, brother, or sister of the offender or his
17 accomplice.]

COMMENT

The victims of a large percentage of crimes are relatives by blood or marriage of the offender or his accomplice, or live in the same household with him. The award of reparations in these cases involves serious questions of policy. Among those questions are the cost of the program, the possibility of fraud and collusion, and other social judgments. The unjust enrichment language at the end of the first sentence of subsection (c) may or may not alone provide adequate protection. The bracketed language at the end of subsection (c) should be included or omitted in an enacting State according to the legislative appraisal of the questions of policy involved.

18 (d) Reparations may not be awarded unless the criminally
19 injurious conduct resulting in injury or death was reported to
20 a law enforcement officer within 72 hours after its occurrence
21 or the Board finds there was good cause for the failure to report
22 within that time.

23 (e) The Board, upon finding that the claimant or victim
24 has not fully cooperated with appropriate law enforcement
25 agencies, may deny, reconsider, or reduce an award of reparations.
26

27 (f) Reparations otherwise payable to a claimant shall be
28 reduced or denied

29 (1) to the extent the economic loss upon which the claim
30 is based is recouped from other persons, including collateral
31 sources, and

32 (2) to the extent the Board deems reasonable because
33 of the contributory misconduct of the claimant or of a victim
34 through whom he claims.

35 [(g) (1) Reparations may be awarded only if the Board
36 finds that unless the claimant is awarded reparations he will
37 suffer financial stress as the result of economic loss otherwise
38 reparable. A claimant suffers financial stress only if he cannot
39 maintain his customary level of health, safety, and education
40 for himself and his dependents without undue financial hardship.
41 In making its finding the Board shall consider all relevant
42 factors, including:

43 (i) the number of claimant's dependents;
44 (ii) the usual living expenses of the claimant and his
45 family;

46 (iii) the special needs of the claimant and his
47 dependents;

48 (iv) the claimant's income and potential earning capacity;
49 and

50 (v) the claimant's resources.

51 (2) Reparations may not be awarded if the claimant's
52 economic loss does not exceed ten per cent of his net financial

53 resources. A claimant's net financial resources do not
54 include the present value of future earnings and shall be
55 determined by the Board by deducting from his total financial
56 resources:

57 (i) one year's earnings;

58 (ii) the claimant's equity, up to \$30,000, in his home;

59 (iii) one motor vehicle; and

60 (iv) any other property exempt from execution under
61 [the general personal property exemptions statute of this
62 State].

63 (3) Notwithstanding paragraph (2):

64 (i) the board may award reparations to a claimant
65 who possesses net financial resources in excess of those
66 allowable under paragraph (2) if, considering the claimant's
67 age, life expectancy, physical or mental condition,
68 and expectancy of income including future earning power,
69 it finds that the claimant's financial resources will become
70 exhausted during his lifetime; or

71 (ii) the Board may (A) reject the claim finally, or (B)
72 reject the claim and reserve to the claimant the right to
73 reopen his claim, if it appears that the exhaustion of
74 claimant's financial resources is probable, in which event
75 the Board may reopen pursuant to an application to
76 reopen if it finds that the resources available to the claimant
77 from the time of denial of an award were prudently
78 expended for personal or family needs.]

COMMENT

Inclusion of a requirement of economic need or financial stress on the part of the victim appears to be accountable only as a cost-reduction factor. While the argument that the State ought not bear the loss of persons rich enough to care for themselves has appeal, in essence it reads a welfare concept into a program not related to welfare. Inclusion of the test will unquestionably increase administrative costs by requiring elaborate investigations into the resources of each claimant. Any savings produced by a needs test may thus be dissipated in the cost of administering that test. On balance, then, elimination of any requirement of financial stress seems wise. If the test is included, however, a real threat to the integrity of the program is posed because a strict "needs" requirement will limit benefits of the program to persons already on welfare and thus be merely an exercise in bookkeeping. The details suggested in the criterion for economic stress are designed to prevent that result.

79 [(h) Reparations may not be awarded if the economic
80 loss is less than [\$100].]

81 ALTERNATIVE A

82 [(i) Reparations for work loss, replacement services
83 loss, dependent's economic loss, and dependent's replacement
84 services loss may not exceed \$200 per week.]

85 ALTERNATIVE B

86 [(i) Reparations for work loss, replacement services
87 loss, dependent's economic loss, and dependent's replacement
88 services loss may not exceed the amount by which the
89 victim's income is reduced below \$200 per week.]

COMMENT

Alternative A should be adopted in a State which desires a maximum weekly limit on reparations but does not incorporate the financial stress test of subsection (g). Alternative B should be adopted in a State which enacts subsection (g).

90 [(j) Reparations payable to a victim and to all other
91 claimants sustaining economic loss because of injury to or
92 death of that victim may not exceed [\$50,000] in the aggregate.]
93

1 SECTION 6. [Notice to Attorney General; Function of Attorney General.]

2 Promptly upon receipt of an application for reparations,
3 the Board shall forward a copy of the application and all supporting
4 papers to the [Attorney General], who in appropriate
5 cases may investigate the claim, appear in hearings on the
6 claim, and present evidence in opposition to or support of an
7 award.
8

1 SECTION 7. [Informal Disposition; Contested Case.]

2 Unless precluded by law, informal disposition may be made
3 of a claim by stipulation, agreed settlement, consent order, or
4 default. A claim not so disposed of is a contested case.

1 SECTION 8. [*Contested Cases; Notice; Hearing; Records.*]

2 (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

3 (b) The notice of hearing shall include:

4 (1) a statement of the time, place, and nature of the hearing;

5 (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

6 (3) a reference to the particular sections of the statutes and rules involved; and

7 (4) a short and plain statement of the matters asserted.

8 To the extent that the board is unable to state the matters at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite statement shall be furnished.

9 (c) Every interested person shall be afforded an opportunity to appear and be heard and to offer evidence and argument on any issue relevant to his interest, and examine witnesses and offer evidence in reply to any matter of an evidentiary nature in the record relevant to his interest.

10 (d) A record of the proceedings shall be made and shall include:

11 (1) the application and supporting documents;

12 (2) all pleadings, motions, and intermediate rulings;

13 (3) evidence offered, received, or considered;

14 (4) a statement of matters officially noticed;

15 (5) all staff memoranda or data submitted to the Board in connection with its consideration of the case; and

16 (6) offers of proof, objections, and rulings.

17 (e) Oral proceedings or any part thereof shall be transcribed on request of any party, who shall pay transcription costs unless otherwise ordered by the Board.

18 (f) Determinations of the Board shall be made in writing, supported by findings of fact and conclusions of law based exclusively on the record, and mailed promptly to all parties.

1 SECTION 9. [*Evidence of Physical Condition.*]

2 (a) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under this Act in which that condition is an element.

3 (b) If the mental, physical, or emotional condition of a victim or claimant is material to a claim, the Board may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person to file with the Board a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

4 (c) On request of the person examined, the Board shall furnish him a copy of the report. If the victim is deceased, the Board, on request, shall furnish the claimant a copy of the report.

5 (d) The Board may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which reparations are claimed.

1 SECTION 10. [*Enforcement of Board's Orders.*]

2 If a person refuses to comply with an order under this Act or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the Board may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the Board may petition the [] Court for an appropriate order, but the Court may not find a person in contempt for refusal to submit to a medical or physical examination.

1 SECTION 11. [*Award and Payment of Reparations.*]

2 (a) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.

3 (b) The Board may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make a tentative award under Section 15.

1 SECTION 12. [*Attorney's Fees.*]

2 As part of an order, the Board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the State to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of reparations and may be made whether or not reparations are awarded. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed.

1 SECTION 13. [*Subrogation; Actions; Allocation of Expenses.*]

2 (a) If reparations are awarded, the State is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that reparations are awarded, from a source which is or, if readily available to the victim or claimant would be, a collateral source.

3 (b) As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which reparations are claimed or awarded, the claimant shall give the Board prior written notice of the proposed action. After receiving the notice, the Board shall promptly (1) join in the action as a party plaintiff to recover reparations awarded, (2) require the claimant to bring the action in his individual name, as a trustee in behalf of the State, to recover reparations awarded, or (3) reserve its rights and do neither in the proposed action. If, as requested by the Board, the claimant brings the action as trustee and recovers reparations awarded by the Board, he may deduct from the reparations recovered in behalf of the State the reasonable expenses, including attorney's fees, allocable by the court for that recovery.

4 (c) If a judgment or verdict indicates separately economic loss and non-economic detriment, payments on the judgment shall be allocated between them in proportion to the amounts indicated. In an action in a court of this State arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for non-economic detriment, punitive damages, and economic loss.

1 SECTION 14. [*Manner of Payment; Non-assignability and Exemptions.*]

2 (a) The Board may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award shall be paid in a lump sum. An award for allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in subsection (b), the part of an award that may not be paid in a lump sum shall be paid in installments.

3 (b) At the instance of the claimant, the Board may commute future economic loss, other than allowable expense, to a lump sum but only upon a finding by the Board that:

4 (1) the award in a lump sum will promote the interests of the claimant; or

5 (2) the present value of all future economic loss other than allowable expense, does not exceed [\$1,000].

6 (c) An award for future economic loss payable in installments may be made only for a period as to which the Board can reasonably determine future economic loss. The Board may reconsider and modify an award for future economic loss payable in installments, upon its finding that a material and substantial change of circumstances has occurred.

7 (d) An award is not subject to execution, attachment, garnishment, or other process, except that an award for allowable

26 expense is not exempt from a claim of a creditor to the extent
27 that he provided products, services, or accommodations the
28 costs of which are included in the award.

29 (e) An assignment or agreement to assign a right to repa-
30 rations for loss accruing in the future is unenforceable,
31 except (1) an assignment of a right to reparations for work
32 loss to secure payment of alimony, maintenance, or child sup-
33 port; or (2) an assignment of a right to reparations for allow-
34 able expense to the extent that the benefits are for the cost of
35 products, services, or accommodations necessitated by the in-
36 jury or death on which the claim is based and are provided or
37 to be provided by the assignee.

1 SECTION 15. [*Tentative Awards.*] If the Board determines
2 that the claimant will suffer financial hardship unless a tenta-
3 tive award is made, and it appears likely that a final award will
4 be made, an amount may be paid to the claimant, to be deduct-
5 ed from the final award or repaid by and recoverable from the
6 claimant to the extent that it exceeds the final award.

1 SECTION 16. [*Reconsideration and Review of Board Deci-*
2 *sions.*]

3 (a) The Board, on its own motion or on request of the
4 claimant, may reconsider a decision making or denying an
5 award or determining its amount. The Board shall reconsider
6 at least annually every award being paid in installments. An
7 order on reconsideration of an award shall not require refund
8 of amounts previously paid unless the award was obtained by
9 fraud.

10 (b) The right of reconsideration does not affect the finality
11 of a Board decision for the purpose of judicial review.

12 (c) A final decision of the Board is subject to judicial re-
13 view on appeal by the claimant, the [Attorney General], or
14 the offender [in the same manner and to the same extent as
15 the decision of a state trial court of general jurisdiction].

1 SECTION 17. [*Reports.*] The Board shall prepare and trans-
2 mit [annually] to the Governor and the Legislature a report
3 of its activities, including the name of the claimant, a brief
4 description of the facts, and the amount of reparations award-
5 ed in each case, and a statistical summary of claims and awards
6 made and denied.

1 SECTION 18. [*Uniformity of Application and Construc-*
2 *tion.*] This Act shall be applied and construed to effectuate
3 its general purpose to make uniform the law with respect to
4 the subject of this Act among those states enacting it.

1 SECTION 19. [*Severability.*] If any provision of this Act
2 or the application thereof to any person is held invalid, the
3 invalidity does not affect other provisions or applications of
4 the Act which can be given effect without the invalid provision
5 or application, and to this end the provisions of this Act are
6 severable.

1 SECTION 20. [*Title.*] This Act may be cited as the Uniform
2 Crime Victims Reparations Act.

H. R. 4257

To help States assist the innocent victims of crime.

IN THE HOUSE OF REPRESENTATIVES

MAY 30, 1979

Mr. RODINO (for himself and Mr. DRINAN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To help States assist the innocent victims of crime.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

SHORT TITLE

3
4 SECTION 1. This Act may be cited as the "Victims of
5 Crime Act of 1979".

POWERS OF THE ATTORNEY GENERAL

6
7 SEC. 2. (a) Subject to the availability of amounts appro-
8 priated, the Attorney General shall make an annual grant
9 and may make supplemental grants for compensation of vic-
10 tims of crime to each State program that qualifies under sec-
1 tion 4. Except as provided in section 5, the grants made to a
2 qualifying State program under this Act with respect to a
3 Federal fiscal year shall equal—

4 (1) 25 per centum of the then current cost, as de-
5 termined by the Attorney General, of such State pro-
6 gram with respect to qualifying crimes that are de-
7 scribed in section 7(8)(A); and

8 (2) 100 per centum of the then current cost, as
9 determined by the Attorney General, of such State
10 program with respect to qualifying crimes that are de-
11 scribed in section 7(8)(B).

12 (b) For the purpose of carrying out the provisions of this
13 Act, the Attorney General is authorized to—

14 (1) prescribe such rules as are necessary to carry
15 out this Act, including rules regarding the data to be
16 kept by State programs receiving assistance under this
17 Act and the manner in which these data shall be re-
18 ported to the Attorney General; and

19 (2) approve in whole or in part, or deny, any ap-
20 plication for an annual or supplemental grant under
21 this Act.

22 (c) Grants under this section may be made in advance or
23 by way of reimbursement. The Attorney General shall not
24 have the power to modify the disposition of any individual
25 claim that has been processed by any State program.

ADVISORY COMMITTEE

1
2 SEC. 3. (a) There is established an Advisory Committee
3 on Victims of Crime (hereinafter in this Act referred to as the
4 "Committee") which shall advise the Attorney General with
5 respect to the administration of this Act and the compensa-
6 tion of victims of crime. The Committee shall consist of nine
7 members, one of whom shall be designated the Chairman, all
8 appointed by the Attorney General. Seven members of the
9 Committee shall be officials of States with programs qualify-
10 ing under section 4. The Committee shall meet at least two
11 times a year, and at such other times as the Attorney Gen-
12 eral may direct. The term of office for each member of the
13 Committee shall be one year. The Committee shall remain in
14 existence until September 30, 1983.

15 (b) While away from their homes or regular places of
16 business in the performance of services for the Committee,
17 members of the Committee shall be allowed travel and trans-
18 portation expenses, including per diem allowance, in the
19 same manner and to the same extent as persons employed
20 intermittently in the Government service are allowed travel
21 and transportation expenses under subchapter I of chapter 57
22 of title 5 of the United States Code.

QUALIFYING STATE PROGRAMS

23
24 SEC. 4. (a) A State proposing to receive grants under
25 this Act shall submit an application to the Attorney General
1 at such time and in such form as the Attorney General shall
2 by rule prescribe. A State program for the compensation of
3 victims of crime qualifies for grants under this Act if the At-
4 torney General finds that such program is in effect in such
5 State on a statewide basis during any part of the Federal
6 fiscal year with respect to which grants are to be made and
7 that such program meets the following criteria:

8 (1) The program offers—

9 (A) compensation for personal injury to any
10 individual who suffers personal injury that is the
11 result of a qualifying crime; and

12 (B) compensation for death to any surviving
13 dependent of any individual whose death is the
14 result of a qualifying crime.

15 (2) The program offers the right to a hearing with
16 administrative or judicial review to aggrieved
17 claimants.

18 (3) The program requires as a condition for com-
19 pensation that claimants cooperate with appropriate
20 law enforcement authorities with respect to the qualify-
21 ing crime for which compensation is sought.

22 (4) There is in effect in the State a requirement
23 that appropriate law enforcement agencies and officials
24 take reasonable care to inform victims of qualifying
25 crimes about—

1 (A) the existence in the State of a program
2 of compensation for injuries sustained by victims;
3 and

4 (B) the procedure for applying for compensa-
5 tion under that program.

6 (5) There is in effect in the State a law or rule
7 that the State is subrogated to any claim the victim, or
8 a dependent of the victim, has against the perpetrator
9 of the qualifying crime for damages resulting from the
10 qualifying crime, to the extent of any money paid to
11 the victim or dependent by the program.

12 (6) The program does not require any claimant to
13 seek or accept any benefit in the nature of welfare
14 unless such claimant was receiving such benefit prior
15 to the occurrence of the qualifying crime that gave rise
16 to the claim.

17 (7) The program requires denial or reduction of a
18 claim if the victim or claimant contributed to the inflict-
19 ion of the death or injury with respect to which the
20 claim is made.

21 (8) There is in effect in the State a law or rule
22 that, in addition to or in lieu of any other penalty, a

23 perpetrator of a crime may be required to make resti-
24 tution to any victim or victim's surviving dependent for
25 that crime.

1 (9) The program does not require that any person
2 be apprehended, prosecuted, or convicted of the quali-
3 fying crime that gave rise to the claim.

4 (10) There is in effect in the State a law or rule
5 that there be assessed upon any person convicted of a
6 qualifying crime as a cost of court (in addition to any
7 other costs assessed under law) a sum not less than
8 \$5.

9 (11) There is in effect in the State a law or rule
10 requiring any person contracting directly or indirectly
11 with an individual formally charged with or convicted
12 of a qualifying crime for any rendition, interview,
13 statement, or article, relating to such crime to deposit
14 any proceeds owing to such individual under the terms
15 of the contract into an escrow fund for the benefit of
16 any victims of such qualifying crime or any surviving
17 dependents of any such victim, if such individual is
18 convicted of that crime, to be held for such period
19 of time as the State may determine is reasonably
20 necessary to perfect the claims of such victims or
21 dependents.

22 (b) If a State has a crime victim compensation program
23 in effect on the effective date of this Act which does not
24 otherwise qualify under subsection (a), such program shall be
25 deemed qualified for grants under this Act until the day after
1 the close of the first regular session of the State legislature
2 that begins after the effective date of this Act.

3 LIMITATIONS ON FEDERAL GRANTS

4 SEC. 5. For purposes of computing the annual cost of a
5 qualifying State program for grants under section 2, there
6 shall be excluded from such cost—

7 (1) administrative expenses of the program;

8 (2) any State compensation award for—

9 (A) pain and suffering; or

10 (B) property loss;

11 (3) any State compensation award to any
12 claimant—

13 (A) who failed to file a claim under the State
14 program within one year after the occurrence of
15 the qualifying crime, unless good cause for such
16 failure has been found by the appropriate State
17 agency; or

18 (B) who failed to report the qualifying crime
19 to law enforcement authorities within seventy-two
20 hours after the occurrence of that qualifying
21 crime, unless good cause for such failure has been
22 found by the appropriate State agency;

23 (4) any amount by which compensation awards
24 with respect to a victim exceed \$25,000;

1 (5) any compensation for loss compensable under
2 the State program that a claimant was entitled to re-
3 ceive from a source other than—

4 (A) the State compensation program; or

5 (B) the perpetrator of the qualifying crime;

6 (6) any State compensation award for lost earn-
7 ings or loss of support to the extent such award is
8 greater than \$200 a week per victim.

9 REPORT OF THE ATTORNEY GENERAL

10 SEC. 5. Not later than one hundred and thirty-five days
11 after the end of each Federal fiscal year in which grants are
12 made to State programs under this Act, the Attorney Gener-
13 al shall submit a report to the House and Senate Committees
14 on the Judiciary. The report shall include—

15 (1) with regard to each qualifying State
16 program—

17 (A) the number of persons compensated;

18 (B) a statistical presentation of—

19 (i) the kinds and corresponding amounts
20 of loss compensated;

21 (ii) the range in monetary value of
22 claims awarded;

23 (iii) the reasons for denial of claims; and

24 (iv) the types of crimes that resulted in
25 claims;

1 (C) a description of the administrative mech-
2 anisms and procedures used in processing claims,
3 including claims for emergency assistance if the
4 program provides for such assistance;

5 (D) the time required to process claims, in-
6 cluding claims for emergency assistance if the
7 program provides for such assistance;

8 (E) efforts made to publicize the program;

9 (F) administrative expenses; and

10 (G) the number of qualifying crimes described
11 in section 7(8)(B) that were compensated; and

12 (2) with regard to the activities of the Attorney
13 General in carrying out this Act—

14 (A) an itemized statement of grants and
15 expenditures;

16 (B) copies of rules made under section 2(b);
17 and

18 (C) projected expenditures for the Federal
19 fiscal year in which the report is required to be
20 submitted.

21 DEFINITIONS

22 SEC. 7. As used in this Act—

23 (1) the term "dependent" means, with respect to
24 a State compensation program, any dependent as de-
25 fined by such State for purposes of such program;

1 (2) the term "personal injury", with respect to a
2 State compensation program, means personal injury as
3 defined by the State for such program;

4 (3) the term "State" means a State of the United
5 States, the District of Columbia, the Commonwealth of
6 Puerto Rico, the Trust Territory of the Pacific Islands,
7 or any other territory or possession of the United
8 States.

9 (4) the term "compensation for personal injury"
10 means compensation for loss that is the result of per-
11 sonal injury caused by a qualifying crime, including—

12 (A) all reasonable expenses necessarily in-
13 curred for ambulance, hospital, surgical, nursing,
14 dental, prosthetic, and other medical and related
15 professional services and devices relating to physi-
16 cal or psychiatric care, including nonmedical care
17 and treatment rendered in accordance with a
18 method of healing recognized by the law of the
19 State;

20 (B) all reasonable expenses necessarily in-
21 curred for physical and occupational therapy and
22 rehabilitation; and

23 (C) loss of past and anticipated future
24 earnings;

1 (5) the term "property loss" does not include ex-
2 penses incurred for medical, dental, surgical, or pros-
3 thetic services and devices;

4 (6) the term "compensation for death" means
5 compensation for loss that is the result of death caused
6 by a qualifying crime, including—

7 (A) all reasonable expenses necessarily in-
8 curred for funeral and burial expenses; and

9 (B) loss of support to any dependent of a
10 victim, not otherwise paid as compensation for
11 personal injury, for such period as the dependency
12 would have existed but for the death of the
13 victim;

14 (7) the term "administrative expenses" means any
15 expenses not constituting compensation for death or
16 compensation for personal injury, and includes any fee
17 awarded by the State agency administering a State
18 compensation program to any claimant's attorney, if
19 such fee is paid in addition to, and not out of, the

20 amount of compensation awarded to such claimant; and

21 (8) the term "qualifying crime", with respect to a
22 qualifying State program, means—

23 (A) any criminally punishable act or omission
24 which such State designates as appropriate for
25 compensation under its program; or

1 (B) any act or omission that would be a
2 qualifying crime under subparagraph (A) except
3 for the fact that such act or omission is subject to
4 exclusive Federal jurisdiction.

5 AUTHORIZATION

6 SEC. 8. For the purpose of carrying out the provisions
7 of this Act, there are authorized to be appropriated
8 \$15,000,000 for the fiscal year ending September 30, 1981;
9 \$25,000,000 for the fiscal year ending September 30, 1982;
10 and \$35,000,000 for the fiscal year ending September 30,
11 1983.

12 EFFECTIVE DATE

13 SEC. 9. This Act shall take effect on October 1, 1979,
14 and grants may be made under this Act with respect to the
15 fiscal year which ends September 30, 1980, and succeeding
16 fiscal years.

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